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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

MONJASA A/S,

Plaintiff,

v.

M/V PERISTIL, her tackle, engines, etc. *in rem*,

Defendant.

Case No. 3:12-cv-01489-BR

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR ORDER AUTHORIZING
WARRANT FOR ARREST OF VESSEL

Plaintiff Monjasa A/S submits this Memorandum of Law In Support of Motion for Order Authorizing Warrant for Arrest in connection with Plaintiff's Verified Complaint seeking arrest of the M/V PERISTIL (the "Vessel"), which Verified Complaint is based on Plaintiff's maritime lien claim against the Vessel in the amount of \$216,139.23, including interest and costs, arising from Plaintiff's provision of bunker fuel to the Vessel pursuant to a contract with the Vessel's time charterer.

FACTUAL BACKGROUND

On January 16, 2012, at the request of the time charterer, Plaintiff sold and delivered to the Vessel 245,690 metric tons of IFO-380cst RMG380-3.5 bunker fuel (the "Fuel"). Verified Complaint, ¶ 9. The time charterer was authorized to purchase the Fuel for the Vessel, and the Fuel was consumed by the Vessel. *Id.* The entire transaction was subject to Plaintiff's General Terms and Conditions, which were expressly referenced in the Fuel delivery Bunker Confirmation as a part of the Fuel sales contract. *Id.* Both the General Terms and Conditions and Bunker Delivery Receipts—signed by the Vessel's chief engineer—confirm that Plaintiff "shall have a maritime lien on the vessel...until payment and interest has been received by the Sellers." *Id.*, Ex. B, Ex. C at ¶ 8.

As shown in the invoice attached to the Verified Complaint as Exhibit D ("Invoice"), the purchase price for the Fuel was \$192,866.65, with payment due no later than February 13, 2012. *Id.* at ¶ 10. As of the date of filing the Motion for Order Authorizing Warrant for Arrest, no part of the outstanding amount due under the Invoice has been paid, although it has been duly demanded. *Id.* at ¶¶ 10, 11. This non-payment constitutes a breach of the terms by which Plaintiff furnished the Fuel to the Vessel. *Id.* at ¶ 12. As set forth in Exhibits C and D attached

to the Verified Complaint, Plaintiff's Invoice provides that interest will accrue on all unpaid balances at the rate of 2% per month, with interest calculated for each overdue day. The total interest due as of August 14, 2012 is \$23,272.58. *Id.* at ¶ 13.

ARGUMENT

The officers or agents of the Vessel's time charter are presumed under 46 U.S.C. § 31341 to have authority to procure necessities such as the Fuel for the Vessel. Plaintiff's General Terms and Conditions, a copy of which are attached to the Verified Complaint, incorporate United States law, specifically its federal maritime law. Verified Complaint, Ex. C at ¶ 16. The time charterer of the Vessel breached its contract with and failed to pay its debt to Plaintiff for the Fuel. Accordingly, both by contract and under United States law, Plaintiff has a maritime lien against the Vessel for the amount owed Plaintiff by the time charterer for Plaintiff's delivery of the Fuel to the Vessel. 46 U.S.C. § 31342; *see also Trans-Tec Asia v. M/V Harmony Container*, 518 F.3d 1120 (9th Cir. 2008) (holding that even between a foreign vessel, foreign fuel supplier, and a foreign owner and charterer, a contract specifying United States maritime law creates a federal maritime lien against vessel for charterer's failure to pay for fuel); *Marine Fuel Supply & Towing, Inc. v. M/V Ken Lucky*, 889 F.2d 473 (9th Cir. 1988) (applying statutory presumption of agent's or charterer's authority to procure necessities and corresponding creation of maritime lien on behalf of supplier).

Under Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims, Plaintiff is accordingly entitled to bring an action *in rem* against the Vessel to enforce Plaintiff's maritime lien against the Vessel, and entitled to a warrant for the arrest of the Vessel.

Rule C(1) specifically provides that an action *in rem* may be brought to enforce any maritime lien. Rule C(3)(a)(i) further provides that, after review of the Verified Complaint and any supporting papers, "if the conditions for an *in rem* action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action." Here, as set forth above, the conditions for an *in rem* action exist, and an order should thus be entered that a warrant for the Vessel's arrest is to be issued.

CONCLUSION

For all the reasons listed above, Plaintiff respectfully requests that this Court grant its Motion For Order Authorizing Warrant For Arrest.

DATED this 16th day of August, 2012.

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